IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8476 of 1990

For Approval and Signature:

HONOURABLE MR.JUSTICE K.A.PUJ

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

SMT. KANTABEN DURGASHANKAR VYAS - Petitioner(s)

Versus

DISTRICT PRIVMARY EDUCATION OFFICER & 2 - Respondent(s)

==========

Appearance :

MR MD RANA for Petitioner(s):

RULE NOT RECD BACK for Respondent(s) : 1,

MR IA PATEL for Respondent(s) : 2 - 3.

==========

CORAM : HONOURABLE MR.JUSTICE K.A.PUJ

Date : 16/02/2006

ORAL JUDGMENT

1. The petitioner has filed this petition under Article 226 of the Constitution of India praying for direction to respondent no.2 to make the pay fixation according to the prescribed pay scales as has been effected by the State Government from time to time of a trained teacher and to pay the arrears accordingly. The petitioner has also prayed for the direction to the respondent no.2 to release the provident fund amount with respect to their contribution and pay the interest thereon and further they may be directed to pay the retiral benefits as is available to the primary teacher.

2. The petition was admitted and rule was issued on 3rd March, 1992. After filing of the petition, the petitioner expired and hence his legal heirs were brought on record by order of this Court passed on 24.11.1995 in C.A.No.2013 of 1995.

3. It is the case of the petitioner that the respondent no.2 is a Registered Trust registered

under the Bombay Public Trust Rules, 1955. The said trust is running the primary school at Dhoraji which is a recognized and approved school by and under the Bombay Primary Education Act and Rules. The said school has started even before the Independence. The said school is imparting education and instructions to Muslim students. It is therefore discharged one of the public functions by imparting primary education to the students. In exercise of its powers under the Bombay Primary Education Act, the State Government by its notification issued in the year 1978 laid down certain conditions of service required to be followed by the management of the Primary School. It lays down certain service condition which are required to be respected by the authorities. It is therefore, obligatory on the private management to fully apply those conditions.

4. It is the case of the petitioner that respondent no.2 is running the school since many years at Dhoraji. The petitioner was appointed in the school on 17.08.1942 at a very meager remuneration. He

continuously served the management as a Teacher and was made to retire on 31.05.1990. The petitioner was borne in the year 1912 and he was continued in the service upto the age of 70 years, as no rules of superannuation were applied to him and he was retired on the date mentioned. At the time of his retirement the petitioner was paid only Rs.538/- in all without any allowances. The petitioner thereafter made representation to the school authority. However, no reply has been given by the school authority and hence, the petitioner has filed the present petition before this Court.

5. Mr.M.D.Rana, learned advocate appearing for the petitioner submits that Schedule F of the Bombay Primary Education Rules, 1949 prescribes conditions of staff in private school in State of Gujarat. Condition no.9 prescribes " Scale of Salaries" which says that scales of pay and allowances payable to the teaching and non-teaching staff shall be such as may be approved by the State Government from time to time. Mr.Rana has further submitted that the State Government has issued

resolution on 07.09.1998 wherein payscale was prescribed. As per the said circular, for trained teachers the new pay-scale with effect from 1.7.96 was Rs.4000-100-6000, whereas prior to 1.1.1996 the pay-scale was Rs.1200-30-1560-EB-40-2040. He has therefore, submitted that as per the said resolution, the petitioner was entitled to the pay-scale of Rs.1200-30-1560-EB-40-2040. As this has not been paid to the petitioner, the respondents are required to be directed to fix the pay-scale of the petitioner and grant him monitory benefits accordingly.

6. The District Education Officer has been joined as party and the endorsement shows that he is unserved. Even from the pleadings and the record of this petition, it appears that the petitioner has never made representation to the District Primary Education Officer ventilating his grievance and has joined him as a party for the first time in the petition so as to bring it within the purview of Article 12 of the Constitution of India. It further appears that petitioner's birth date, as stated in

the petition, was of 1912 and he had been retired from service on 31st May, 1990. It appears that he might have worked for almost about upto the age of 78 years. The petitioner has not raised any grievance during his service tenure. It is only after his retirement he has filed the present petition. There is no documentary evidence to the effect that the petitioner was appointed in the respondent school on what conditions. The respondent school is also a minority school where all the rules may not apply. It is not borne out from the fact that after date of retirement which is normally 58 years, on what conditions, the petitioner was allowed to continue in the said school.

7. In absence of requisite details and in view of the belated claim made by the petitioner, the Court is not inclined to entertain this petition. The petitioner has no case even on merits. The Court is therefore of the view that petition is belatedly filed and that too after his retirement. The Court, therefore, does not want to entertain this petition

while exercising powers under Article 226 of the Constitution of India. Petition is therefore, dismissed. Rule is discharged without any order as to costs.

(K.A.PUJ, J.)

amit